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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Ocean Garden Products Incorporated,  
10 Plaintiff,  
11 v.  
12 Blessings Incorporated, et al.,  
13 Defendants.

No. CV-18-00322-TUC-RM  
Consolidated with:  
No. CV-19-00284-TUC-RM

**ORDER**

15 Pending before the Court are Plaintiff Ocean Garden Products Incorporated's  
16 ("OG") Motions to Compel and for Sanctions against ADAB Ocean Harvest, S. De R.L.  
17 De C.V. ("ADAB Mexico") (Doc. 341)<sup>1</sup> and Pacific Ocean Harvest, S. De R.L. De C.V.  
18 ("Pacific Ocean") (Doc. 396). The Motions are fully briefed. (Docs. 352, 365, 398,  
19 399.)<sup>2</sup>

20 **I. Legal Standard**

21 Rule 26 provides that "[p]arties may obtain discovery regarding any nonprivileged  
22 matter that is relevant to any party's claim or defense and proportional to the needs of the  
23 case." Fed. R. Civ. P. 26(b)(1). "Information within this scope of discovery need not be  
24 admissible in evidence to be discoverable." *Id.* In determining whether discovery is  
25 proportional to the needs of the case, courts consider "the importance of the issues at  
26 stake in the action, the amount in controversy, the parties' relative access to relevant

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28 <sup>1</sup> All record citations refer to the page numbers generated by the Court's electronic filing  
system and, unless otherwise noted, the docket in case number CV 18-322.

<sup>2</sup> The Court finds the Motions suitable for resolution without oral argument.

1 information, the parties' resources, the importance of the discovery in resolving the  
 2 issues, and whether the burden or expense of the proposed discovery outweighs its likely  
 3 benefit." *Id.*

4 A party may serve on any other party a request for production that is within the  
 5 scope of Rule 26(b). Fed. R. Civ. P. 34(a). A party may serve an interrogatory relating  
 6 "to any matter that may be inquired into under Rule 26(b)." Fed. R. Civ. P. 33(a)(2).  
 7 "An interrogatory is not objectionable merely because it asks for an opinion or contention  
 8 that relates to fact or the application of law to fact." *Id.* Responses to interrogatories and  
 9 requests for production are due within 30 days of the date of service. Fed. R. Civ. P.  
 10 33(b)(2); Fed. R. Civ. P. 34(b)(2)(A). If objection is made, the grounds and reasons for  
 11 the objection must be stated "with specificity." Fed. R. Civ. P. 33(b)(4); Fed. R. Civ. P.  
 12 34(b)(2)(B). An "evasive or incomplete disclosure, answer or response" is "treated as a  
 13 failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4).

14 "It is well established that a failure to object to discovery requests within the time  
 15 required constitutes a waiver of any objection." *Richmark Corp. v. Timber Falling  
 Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992). However, Rule 33 allows courts to  
 16 excuse such a waiver "for good cause." Fed. R. Civ. P. 33(b)(4). Although Rule 34 does  
 17 not contain an analogous provision, courts "generally agree that there is no reason to treat  
 18 waiver under Rule 34 any different than Rule 33." *Liguori v. Hansen*, No. 2:11-cv-  
 19 00492-GMN-CWH, 2012 WL 760747, at \*12 (D. Nev. Mar. 6, 2012). Accordingly,  
 20 courts "retain discretion to relieve a late or non-responding party from the potentially  
 21 harsh consequences associated with waiver." *Id.* at \*11.

22 On motion or *sua sponte*, a court must limit the frequency or extent of discovery if  
 23 it determines that:

24

- 25 (i) the discovery sought is unreasonably cumulative or duplicative, or can  
   be obtained from some other source that is more convenient, less  
   burdensome, or less expensive;
- 26 (ii) the party seeking discovery has had ample opportunity to obtain the  
   information by discovery in the action; or
- 27 (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

28 Fed. R. Civ. P. 26(b)(2)(C).

1       A party may move under Rule 37 of the Federal Rules of Civil Procedure for an  
 2 order compelling disclosure or discovery. Fed. R. Civ. P. 37(a)(1). A motion to compel  
 3 may be made if a party fails to answer an interrogatory submitted under Rule 33 or fails  
 4 to produce documents as requested under Rule 34. *Id.* at 37(a)(3)(B)(iii)-(iv). The  
 5 moving party generally bears the burden of showing why the non-moving party's  
 6 responses were deficient or objections unjustified. *Womack v. Virga*, No. CIV S-11-1030  
 7 MCE EFB P, 2011 WL 6703958, at \*3 (E.D. Cal. Dec. 21, 2011).

8       If a motion to compel “is granted—or if the disclosure or requested discovery is  
 9 provided after the motion was filed—the court must, after giving an opportunity to be  
 10 heard, require the party or deponent whose conduct necessitated the motion, the party or  
 11 attorney advising that conduct, or both to pay the movant's reasonable expenses incurred  
 12 in making the motion, including attorney's fees.” Fed. R. Civ. P. 37(a)(5). However,  
 13 such payment must not be ordered if “the movant filed the motion before attempting in  
 14 good faith to obtain the disclosure or discovery without court action”; if “the opposing  
 15 party's nondisclosure, response, or objection was substantially justified”; or if “other  
 16 circumstances make an award of expenses unjust.” *Id.*

## 17       **II. Motion to Compel and for Sanctions Against Pacific Ocean**

### 18       **A. Background**

19       In July 2018, OG initiated a lawsuit against Blessings, Inc. (“Blessings”) and  
 20 David Mayorquin in case number CV-18-322. (Doc. 1.) OG later initiated a separate  
 21 lawsuit alleging claims under Arizona's Uniform Fraudulent Trade Act (“UFTA”) against  
 22 numerous defendants, including Pacific Ocean, in case number CV-19-284. (Doc. 1 in  
 23 CV-19-284) (the “UFTA Action”). After case numbers CV-18-322 and CV-19-284 were  
 24 consolidated, OG filed a First Amended Complaint in the UFTA Action (“UFTA FAC”).  
 25 (Doc. 154.) Pacific Ocean moved to dismiss for lack of personal jurisdiction the claims  
 26 asserted against it in the UFTA FAC. (Doc. 157.) In an Order filed on October 25, 2019,  
 27 this Court granted Pacific Ocean's Motion to Dismiss the UFTA FAC but gave OG leave  
 28 to file a Second Amended UFTA Complaint (“UFTA SAC”). (Doc. 239.) OG filed its

1 UFTA SAC on November 25, 2019. (Doc. 260.) Pacific Ocean again moved for  
 2 dismissal. (Doc. 299.) On February 18, 2020, the Court denied Pacific Ocean's Motion  
 3 to Dismiss the UFTA SAC. (Doc. 338.)

4 **B. Discovery Responses**

5 In the pending Motion to Compel and for Sanctions Against Pacific Ocean, OG  
 6 avers that it served discovery requests on Pacific Ocean in August and September 2019,  
 7 and that Pacific Ocean's sole objection was that it had a dismissal motion pending. (Doc.  
 8 396 at 3; *see also* Doc. 396-1 at 2-7.) OG argues that the objection was frivolous when  
 9 made and has been moot since the February 2020 denial of Pacific Ocean's Motion to  
 10 Dismiss the UFTA SAC, but that Pacific Ocean "continues to stonewall discovery." (*Id.*  
 11 at 3, 13-14.) OG further notes that Pacific Ocean has failed to serve any MIDP  
 12 responses, in violation of General Order 17-08. (*Id.* at 15; *see also* Doc. 5.) OG requests  
 13 that Pacific Ocean be compelled to respond to the August and September 2019 discovery  
 14 requests and that it be required to reimburse OG for the cost of filing the Motion to  
 15 Compel. (*Id.* at 15-18; *see also* Doc. 396-1 at 2-7.)

16 OG's LRCiv 37.1 Statement avers that the following discovery requests are at  
 17 issue:

- 18 • Request for Production ("RFP") numbers 21, 22, 23, 26, and 27 from OG's  
   19 August 30, 2019 First Consolidated Requests for Production
- 20 • Interrogatory numbers 1, 2, and 3 from OG's August 30, 2019 First Set of  
   21 Interrogatories to Pacific Ocean
- 22 • Interrogatory numbers 4, 5, 6, 7, and 8 from OG's September 13, 2019 Second Set  
   23 of Interrogatories to Pacific Ocean

24 (Doc. 396-1 at 2-7.) To each of these discovery requests, Pacific Ocean objected that the  
 25 request was premature because its dismissal motion was awaiting decision by the Court.  
 26 (*Id.*)

27 In response to OG's Motion to Compel, Pacific Ocean argues that the discovery  
 28 requests at issue were mooted by the granting of its first dismissal motion and were not

1 resurrected by the filing of OG's UFTA SAC. (Doc. 398 at 2-5.) Pacific Ocean avers that  
 2 it timely responded, on February 3, 2020, to discovery requests served by OG on January  
 3 6, 2020, which Pacific Ocean argues are the only requests served pursuant to the UFTA  
 4 SAC. (*Id.* at 3.) In support of its argument that the granting of its first dismissal motion  
 5 mooted any then-pending discovery requests, Pacific Ocean cites *Clardy v. Gaunt*, No.  
 6 3:14-cv-01055-CL, 2016 WL 5858673 (D. Or. Oct. 3, 2016); *Parkinson v. United States*,  
 7 175 F. Supp. 2d 1233, 1247 (D. Idaho 2001); and *Handy v. Price*, 996 F.2d 1064, 1068  
 8 (10th Cir. 1993). (*Id.* at 4-5.)

9 In reply, OG argues that the case law is contrary to Pacific Ocean's position that  
 10 the granting of its first dismissal motion with leave to amend rendered OG's pending  
 11 discovery requests permanently moot. (Doc. 399 at 2-7 (citing *Adams v. Kraft*, No. C10-  
 12 00602 LHK (HRL), 2011 WL 1522407 (N.D. Cal. Apr. 21, 2011).) OG also complains  
 13 that Pacific Ocean never asserted its mootness argument during the parties' personal  
 14 consultation regarding OG's discovery requests, evidencing a failure to participate in the  
 15 meet-and-confer process in good faith. (*Id.* at 2, 7-9.) OG notes that Pacific Ocean does  
 16 not address in its Response to the Motion to Compel its failure to serve any MIDP  
 17 responses. (*Id.* at 2.) OG further notes that Pacific Ocean served objections to OG's  
 18 January 3, 2020 discovery requests but no substantive responses. (*Id.* at 3.)<sup>3</sup>

19 The Court will order Pacific Ocean to respond to OG's RFP numbers 21, 22, 23,  
 20 26, and 27, and interrogatory numbers 1-8. Pacific Ocean's original objections to these  
 21 discovery requests argued that the requests were premature because Pacific Ocean had a  
 22 pending dismissal motion. After the Court granted Pacific Ocean's Motion to Dismiss  
 23 the UFTA FAC, Pacific Ocean failed to supplement its objections to raise the mootness  
 24 argument that it now asserts in response to OG's Motion to Compel. Neither Pacific  
 25 Ocean's original prematurity objection, nor its current mootness objection, is supported  
 26 by the case law.

27 A district court may "stay discovery when it is convinced that the plaintiff will be

28 <sup>3</sup> To support this averment, OG attaches as an exhibit to its Reply Pacific Ocean's  
 objections to OG's January 3, 2020 Third Set of Interrogatories. (Doc. 399-2.)

1 unable to state a claim for relief.” *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981).  
 2 However, “[d]iscovery stays are not automatic.” *Optronic Techs., Inc. v. Ningbo Sunny*  
 3 *Elec. Co.*, No. 5:16-cv-06370-EJD, 2018 WL 1569811, at \*1 (N.D. Cal. Feb. 16, 2018);  
 4 *see also Holmes v. McMillan*, No. CIV 09-00225 PHX MEA, 2009 WL 10673424, at \*3  
 5 (D. Ariz. Nov. 24, 2009). The notion that discovery is automatically stayed upon the  
 6 filing of a dismissal motion is not supported by the Federal Rules of Civil Procedure and  
 7 is “directly at odds with the need for expeditious resolution of litigation.” *Skellerup*  
 8 *Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600-01 (C.D. Cal. 1995).

9 Pacific Ocean’s filing of dismissal motions did not automatically relieve it of its  
 10 obligation to respond to OG’s discovery requests, and Pacific Ocean failed to seek a  
 11 protective order and/or a stay of discovery pending resolution of the dismissal motions.  
 12 Accordingly, the Court finds that Pacific Ocean’s prematurity objections to OG’s  
 13 discovery requests were legally unsupported.<sup>4</sup>

14 Furthermore, the granting of Pacific Ocean’s first dismissal motion with leave to  
 15 amend did not render OG’s August and September 2019 discovery requests permanently  
 16 moot. *See Adams*, 2011 WL 1522407 at \*1-2 (ordering a party to respond to discovery  
 17 requests served prior to the filing of an amended complaint where the requests pertained  
 18 to claims that had been revived in the amended complaint and encompassed information  
 19 relevant to the allegations of the amended complaint). OG’s UFTA SAC included  
 20 additional allegations to establish this Court’s personal jurisdiction over Pacific Ocean;  
 21 however, the UFTA SAC repeated the same substantive UFTA allegations against Pacific  
 22 Ocean, and the discovery requests at issue seek information pertinent to those allegations.  
 23 Accordingly, the granting of Pacific Ocean’s first dismissal motion with leave to amend  
 24 and the filing of the UFTA SAC did not render the discovery requests permanently moot.

25 The cases relied upon by Pacific Ocean do not hold to the contrary. In *Clardy* and

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26  
 27 <sup>4</sup> The Court also notes that Pacific Ocean appears to have abandoned its position that  
 28 discovery requests need not be responded to when a dismissal motion is pending, as it  
 served timely objections to OG’s January 3, 2020 discovery requests before this Court  
 had resolved its Motion to Dismiss the UFTA SAC. (See Doc. 324; Doc. 338; Doc. 398  
 at 3.)

1 *Parkinson*, discovery requests were found to be moot where they pertained to the conduct  
 2 of defendants whose motions to dismiss had been granted *without* leave to amend.  
 3 *Clardy*, 2016 WL 5858673, at \*2; *see also Clardy v. Gaunt*, No. 3:14-cv-01055-CL, 2015  
 4 WL 1058970, at \*1 (D. Or. Mar. 6, 2015); *Parkinson*, 175 F. Supp. 2d 1233 at 1241,  
 5 1247. In *Handy*, the court found that the granting of the defendant’s summary judgment  
 6 motion rendered moot the plaintiff’s request for injunctive relief. 996 F.2d at 1068.  
 7 None of the three cases hold that the granting of a motion to dismiss *with leave to amend*  
 8 renders discovery requests moot even after the filing of an amended complaint that  
 9 reiterates the same substantive allegations. The Court will grant OG’s Motion to  
 10 Compel.

11 **C. MIDP Responses**

12 General Order 17-08 requires parties to serve mandatory initial discovery  
 13 responses containing specified categories of information. “A party filing a responsive  
 14 pleading . . . must serve its initial discovery responses no later than 30 days after it files  
 15 its responsive pleading under Rule 12(a).” Gen. Ord. 17-08(A)(6). Parties must file  
 16 answers within 14 days after notice of the Court’s denial of a Rule 12 motion to dismiss.  
 17 Fed. R. Civ. P. 12(a)(4)(A). The Court denied Pacific Ocean’s Motion to Dismiss OG’s  
 18 UFTA SAC on February 18, 2020. (Doc. 338.) The Court’s review of the docket  
 19 indicates that, to date, Pacific Ocean has not filed an answer, nor has it served any MIDP  
 20 responses. Even though OG’s Motion to Compel highlighted Pacific Ocean’s failure to  
 21 serve MIDP responses, Pacific Ocean did not make any attempt to address that failure in  
 22 its Response to the Motion to Compel. The Court will order Pacific Ocean to serve  
 23 MIDP responses in compliance with General Order 17-08.

24 **D. Fee-Shifting Sanctions**

25 The record before the Court shows that OG attempted in good faith to obtain the  
 26 discovery at issue from Pacific Ocean prior to filing its Motion to Compel. *See* Fed. R.  
 27 Civ. P. 37(a)(5)(A)(i). The record does not show that Pacific Ocean’s failure to respond  
 28 to OG’s discovery requests was substantially justified or that a fee-shifting award would

1 be unjust under the circumstances. *See* Fed. R. Civ. P. 37(a)(5)(A)(ii)-(iii). Accordingly,  
 2 the Court finds that a fee-shifting order under Rule 37(a)(5)(A) is appropriate.

3 Rule 37(b)(2) provides that, if a party fails to obey an order to provide discovery,  
 4 the Court may issue “further just orders” and “must order the disobedient party, the  
 5 attorney advising that party, or both to pay the reasonable expenses, including attorney’s  
 6 fees, caused by the failure, unless the failure was substantially justified or other  
 7 circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(b)(2)(A), (C).  
 8 Rule 37(b)(2) applies to MIDP responses. Gen. Ord. 17-08(A)(11). Pacific Ocean has  
 9 not addressed its failure to serve MIDP responses, much less shown that “the failure was  
 10 substantially justified” or that “other circumstances make an award of expenses unjust.”  
 11 Fed. R. Civ. P. 37(b)(2)(C). Accordingly, although it declines at this time to take any of  
 12 the actions listed under Rule 37(b)(2)(A)(i)-(vii), the Court finds that a fee-shifting award  
 13 is appropriate under Rule 37(b)(2)(C), in addition to being appropriate under Rule  
 14 37(a)(5)(A).

15 **III. Motion to Compel and for Sanctions Against ADAB Mexico**

16 At issue in OG’s Motion to Compel and for Sanctions Against ADAB Mexico are  
 17 OG’s RFP numbers 18, 26, 27, 29, and 30, and interrogatory numbers 1, 6, 8, 9, 10, 11,  
 18 12, and 13. (Doc. 341-1 at 2-15.) These discovery requests primarily seek information  
 19 and documents pertaining to a loan from Blessings to ADAB Mexico—including  
 20 information about a ledger known as Account No. 1322 and information about Blessings’  
 21 Exhibit 109 from the injunction hearing held on July 23, 2019 and August 22-23, 2019.  
 22 (Doc. 341 at 5-7, 9-10.) The requests also seek information regarding the maquiladora  
 23 agreement(s) entered into by Blessings and ADAB Mexico, information about ADAB  
 24 Mexico’s bank accounts and customers, and information about a lease between ADAB  
 25 Mexico and Pacific Ocean. (*Id.* at 7-11.)

26 OG argues that the majority of ADAB Mexico’s objections to the discovery  
 27 requests at issue have been waived due to untimeliness and because they are boilerplate.  
 28 (*Id.* at 12-13.) OG further argues that ADAB Mexico is obligated to produce information

1 that it claims is in Blessings' possession. (*Id.* at 13-14.) OG asks the Court to order  
 2 ADAB Mexico to answer its interrogatories in the narrative instead of invoking Rule  
 3 33(d), and it argues that ADAB Mexico should be prohibited from incorporating by  
 4 reference other materials when answering the interrogatories. (*Id.* at 14-15.) OG  
 5 contends that any confidentiality concerns are adequately addressed by the Court's  
 6 protective order, and it requests a fee-shifting order under Rule 37. (*Id.* at 15-17.)

7 In response to the Motion to Compel, ADAB Mexico avers that it has been serving  
 8 discovery responses on a rolling basis and that it intends to continue doing so but needs  
 9 more time. (Doc. 352 at 2.) ADAB Mexico argues that it is entitled to special  
 10 consideration as a foreign litigant, it accuses OG of "abusive discovery practices," and it  
 11 argues that OG failed to fully participate in the meet-and-confer process. (*Id.* at 2-3, 8-9,  
 12 13, 17.) ADAB Mexico further argues that it has no obligation to respond to discovery  
 13 requests requiring the production of Blessings' records or the disclosure of information  
 14 controlled by Blessings. (*Id.* at 4-6, 9-11.) Furthermore, ADAB Mexico contends that  
 15 OG already received information responsive to some of the discovery requests at issue.  
 16 (*Id.* at 7, 12.) ADAB Mexico disputes OG's waiver arguments and contests the relevance  
 17 and proportionality of certain interrogatories. (*Id.* at 11-12, 14-17.) Finally, ADAB  
 18 Mexico argues that a fee-shifting award would be unjust. (*Id.* at 17.)

19 The parties attach numerous exhibits to their briefs, including Declarations by  
 20 David Mannion (Doc. 341-2; Doc. 373), David Boden (Doc. 341-22), William Klain  
 21 (Doc. 352-2), Erin McGinnis (Doc. 352-4), and Jonathan Saffer (Doc. 352-5);  
 22 documentation of the parties' discovery responses and discovery-dispute communications  
 23 (Doc. 341-13 to 341-21; Doc. 352-3; Doc. 365-5; Doc. 373-1 to 373-2), and a statement  
 24 of facts submitted by ADAB Mexico concerning the parties' discovery disputes (Doc.  
 25 352-1).

26 **A. Waiver—Boilerplate Objections**

27 As an initial matter, the Court rejects OG's argument that ADAB Mexico's  
 28 objections to the discovery requests at issue have been waived because they are

1 boilerplate. (Doc. 341 at 13.) In support of this argument, OG relies upon *Blemaster v.*  
 2 *Sabo*, No. 2:16-cv-04557 JWS, 2017 WL 4843241, at \*4 (D. Ariz. Oct. 25, 2017);  
 3 *Reinsdorf v. Skechers U.S.A., Inc.*, No CV 10-7181 DDP (SSx), 2013 WL 12116416, at  
 4 \*8 (C.D. Cal. Sept. 9, 2013); *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 188  
 5 (C.D. Cal. 2006); and *Ramirez v. County of Los Angeles*, 231 F.R.D. 407, 409 (C.D. Cal.  
 6 2005). (Doc. 341 at 13.) These cases recognize the impropriety of boilerplate objections,  
 7 but they do not support OG’s position. Boilerplate objections do not result in an  
 8 automatic waiver. *Del Socorro Quintero Perez v. United States*, No. 13cv1417-WQH-  
 9 BGS, 2016 WL 304877, at \*1-2 (S.D. Cal. Jan. 25, 2016). In *A. Farber & Partners*, the  
 10 court found boilerplate objections improper but did not find that they resulted in waiver.  
 11 *See* 234 F.R.D. at 188. While the other cases cited by OG do recognize that objections  
 12 that are “are too general to merit consideration” are waived, *Ramirez*, 231 F.R.D. at 409,  
 13 ADAB Mexico’s objections to the discovery requests at issue here are sufficiently  
 14 tailored to allow for consideration on their merits, unlike the litany of copy-pasted,  
 15 nonsensical boilerplate objections at issue in *Blemaster* and *Reinsdorf*. *See Blemaster*,  
 16 2017 WL 4843241 at \*3-4; *Reinsdorf*, 2013 WL 12116416 at \*8-11.

## 17           B.     Meet-and-Confer Requirement

18           The parties dispute whether OG engaged in the meet-and-confer process in good  
 19 faith with respect to ADAB Mexico’s December 19, 2019 discovery responses. (Doc.  
 20 352 at 8-9; Doc. 365 at 12.) A motion to compel “must include a certification that the  
 21 movant has in good faith conferred or attempted to confer with the person or party failing  
 22 to make disclosure or discovery in an effort to obtain it without court action.” Fed. R.  
 23 Civ. P. 37(a)(1). OG’s Motion to Compel includes a certification by Plaintiff’s attorney  
 24 David Mannion detailing the party’s discussions regarding ADAB Mexico’s discovery  
 25 responses. (Doc. 341-2.) Upon consideration of David Mannion’s Rule 37(a)(1)  
 26 Certification (Doc. 341-1), ADAB Mexico’s statement of facts (Doc. 352-2), and the  
 27 other materials of record (*see, e.g.*, Doc. 341-13 at 10-12), the Court finds that OG has  
 28 satisfied the meet-and-confer requirement. Although the Rule 37(a)(1) Certification does

1 not indicate that OG continued the meet-and-confer process after December 19, 2019, the  
 2 materials of record sufficiently show that OG attempted in good faith to resolve the  
 3 substance of the parties' discovery disputes prior to filing its Motion to Compel.

4 **C. OG's First Consolidated RFPs**

5 OG served its First Consolidated RFPs on August 30, 2019, including RFP  
 6 numbers 18, 26, and 27. (Doc. 341-1 at 2-3; Doc. 352-1 at 3.) ADAB Mexico timely  
 7 responded on September 30, 2019. (Doc. 341-1 at 2-3; Doc. 352-1 at 3.)

8 **1. RFP Number 18**

9 RFP number 18 sought “[a]ll banking documents for ADAB Mexico for the period  
 10 January 1, 2011, onwards, including bank statements, wire transfer documents, and  
 11 copies of cancelled checks (front and back).” (Doc. 341-1 at 2.) ADAB Mexico timely  
 12 objected that the request was “overly broad” and “unduly burdensome,” that it was  
 13 “disproportionate to the legitimate needs of the case” and “not reasonably calculated to  
 14 lead to the discovery of admissible evidence,” and that it sought “documents that contain  
 15 highly confidential financial and business information.” (*Id.*) OG argues that these  
 16 objections are waived because they are boilerplate, and that any confidentiality concerns  
 17 are adequately addressed by this Court’s protective order. (*Id.*) ADAB Mexico disputes  
 18 OG’s contention that its objections are waived for being boilerplate, and it asks the Court  
 19 to review RFP number 18 for relevance, over-broadness, and proportionality. (Doc. 352  
 20 at 14, 16-17.) ADAB Mexico argues that the Court should deny OG’s Motion to Compel  
 21 as to RFP number 18 or, alternatively, limit its order of production to bank records in  
 22 ADAB Mexico’s possession or control from 2014 to 2018. (*Id.* at 16-17.) ADAB  
 23 Mexico argues that it should not be required to produce any information pre-dating late  
 24 2014, because that is the year in which OG alleges fraudulent transfers to ADAB Mexico  
 25 began. (*Id.* at 16.) OG contends that bank account information from 2011 onwards is  
 26 relevant because Defendants claim that Blessings loaned ADAB Mexico money to get it  
 27 set up as a maquiladora in the 2011-2012 time frame. (Doc. 341 at 10.)

28 As an initial matter, ADAB Mexico’s objection that RFP number 18 seeks

1 documents “not reasonably calculated to lead to the discovery of admissible evidence” is  
 2 based on an outdated version of Rule 26. Rule 26 was amended on December 1, 2015.  
 3 Prior to the 2015 amendments, Rule 26(b)(1) stated that inadmissible evidence was  
 4 discoverable if it “appears reasonably calculated to lead to the discovery of admissible  
 5 evidence.” The “reasonably calculated” phrase was eliminated by the 2015 amendments  
 6 and is no longer the governing standard. *In re Bard IVC Filters Prods. Liability Litig.*,  
 7 317 F.R.D. 562, 563-64 (D. Ariz. Sept. 16, 2016). “The test going forward is whether  
 8 evidence is ‘relevant to any party’s claim or defense,’ not whether it is ‘reasonably  
 9 calculated to lead to the discovery of admissible evidence.’” *Id.* at 564.

10 The documents requested in RFP number 18 are relevant to OG’s UFTA claims.  
 11 At the injunction hearing, Defendants represented that Blessings set up ADAB Mexico as  
 12 a maquiladora in the 2011-2012 time frame. (See Doc. 218 at 2.) OG alleges that  
 13 Blessings was in serious financial distress and faced an existential threat from an ongoing  
 14 criminal investigation from at least 2012 onwards, and that Defendants began  
 15 “systematically transferring Blessings’ assets down to ADAB Mexico” before the  
 16 criminal investigation became public. (Doc. 423 ¶¶ 4-5, 43-44.) OG has also contended  
 17 that Defendants’ transfer of assets has continued during the course of this litigation.  
 18 ADAB Mexico’s banking documents from 2011 onwards are relevant to show how much  
 19 money Blessings transferred to ADAB Mexico and when the transfers occurred. ADAB  
 20 Mexico has not shown that it lacks the ability to request copies of its banking documents  
 21 from its banks, nor that doing so would be particularly burdensome. Considering the  
 22 importance of the issue of cash transfers, the significant amount in controversy, the  
 23 parties’ relevant access to ADAB Mexico’s banking documents, and the limited burden  
 24 or expense to ADAB Mexico of requesting copies of those documents, the Court finds  
 25 that RFP number 18 is proportional to the needs of this case. Fed. R. Civ. P. 26(b)(1).  
 26 Furthermore, the Court finds that its protective order adequately addresses concerns  
 27 regarding the confidential nature of the documents. Accordingly, the Court will order  
 28 ADAB Mexico to produce the documents requested by RFP number 18.

## 2. RFP Number 26

RFP number 26 sought a “copy of any leases between Pacific Mexico, ADAB Mexico, and/or Blessings concerning Pacific Mexico’s use of any shrimp processing equipment in Mexico.” (Doc. 341-1 at 2.) ADAB Mexico timely objected that the request was “premature” because Pacific Mexico had filed a then-pending dismissal motion. (*Id.*) In response to OG’s Motion to Compel, ADAB Mexico concedes that its response to RFP number 26 should be supplemented but complains of OG’s “abusive discovery practices.” (Doc. 352 at 15-16.)

For the reasons discussed above, ADAB Mexico’s prematurity objection was invalid when made and, in any case, has been moot since February 2020, when the Court denied Pacific Mexico’s Motion to Dismiss the UFTA SAC. ADAB Mexico has not shown that providing copies of the leases requested in RFP number 26 would be difficult or burdensome. ADAB Mexico must produce the documents requested by RFP number 26, and it should have done so before OG filed its Motion to Compel.

### 3. RFP Number 27

RFP number 27 sought “[c]opies of all appraisals, opinions, emails, and any other advisory documents showing that reasonably equivalent value was given in connection with the lease pursuant to which Pacific Mexico is using processing equipment in Mexico.” (Doc. 341-1 at 3.) ADAB Mexico again objected on the grounds that the request was “premature” due to Pacific Mexico’s then-pending Motion to Dismiss. (*Id.*) In response to OG’s Motion to Compel, ADAB Mexico again concedes that its response should be supplemented. (Doc. 352 at 15-16.)

ADAB Mexico’s prematurity objection was invalid when made and has been moot since February 2020. ADAB Mexico has not shown that responding to RFP number 27 would be difficult or burdensome. ADAB Mexico must produce the documents requested by RFP number 27, and it should have done so prior to the filing of OG’s Motion to Compel.

• • • •

1                   **D. OG's Second Consolidated RFPs**

2                   OG served its Second Consolidated RFPs on September 27, 2019, including RFP  
 3 numbers 29 and 30. (Doc. 341-1 at 14-15.) RFP number 29 requested documents  
 4 backing up every entry on Exhibit 109. (Doc. 341-1 at 14.) RFP number 30 requested all  
 5 documents Blessings' comptroller Erin McGinnis used to prepare Exhibit 109. (*Id.* at  
 6 15.) ADAB Mexico did not respond to either RFP. (*Id.* at 14-15.)

7                   In response to OG's Motion to Compel, ADAB Mexico argues that it is not  
 8 required to respond to the requests in OG's Second Consolidated Requests for Production  
 9 because it is not required to produce Blessings' records. (Doc. 352 at 4-6.) According to  
 10 ADAB Mexico, the practical ability to obtain documents or an inherent relationship are  
 11 insufficient to establish that it has a legal right to obtain Blessings' documents. (*Id.* at 6.)  
 12 ADAB Mexico further argues that Blessings served supplemental discovery responses  
 13 that provided the information sought in RFP numbers 29 and 30. (*Id.* at 7.)

14                  OG disputes that it has already received information responsive to RFP numbers  
 15 29 and 30, averring that Blessings' document production accounts for only around  
 16 \$20,000 of the \$2,677,683 ADAB loan shown on Exhibit 109. (Doc. 365 at 10.) OG  
 17 also argues that David and Abraham Mayorquin, as the owners of both Blessings and  
 18 ADAB Mexico, have the legal right to get information from their own companies, and  
 19 that ADAB Mexico, as the borrower of the ADAB loan, should have actual possession of  
 20 documents and information concerning that loan. (*Id.* at 2-3, 10-11; *see also* Doc. 341 at  
 21 13-14.) Finally, OG argues that ADAB Mexico has failed to explain its failure to serve  
 22 any objections to RFP numbers 29 and 30. (Doc. 365 at 4.)

23                  ADAB Mexico has not shown good cause to excuse its failure to timely object to  
 24 RFP numbers 29 and 30. *See Liguori*, 2012 WL 760747, at \*11-12. By failing to timely  
 25 object, ADAB Mexico has waived its objections. *See Richmark Corp.*, 959 F.2d at 1473.  
 26 Accordingly, the Court declines to consider ADAB Mexico's objections and will require  
 27 ADAB Mexico to produce the documents requested by RFP numbers 29 and 30.<sup>5</sup>

28 <sup>5</sup> Though ADAB Mexico contests, in its untimely objections, whether it has the legal  
 29 right to obtain documents from Blessings, it appears that ADAB Mexico does have the

1                   **E. OG's First Set of Interrogatories to ADAB Mexico**

2                   According to OG's LRCiv 37.1 Statement, OG served its First Set of  
 3 Interrogatories to ADAB Mexico on August 30, 2019, including interrogatory numbers 1  
 4 and 6. (Doc. 341-1 at 4-5; Doc. 352-1 at 3.) Other materials in the record indicate that  
 5 interrogatory number 6 was served as part of OG's September 27, 2019 Second Set of  
 6 Interrogatories to ADAB Mexico. (See Doc. 352-1 at 3; Doc. 365-5.) ADAB Mexico  
 7 served its initial response to interrogatory number 1 on September 30, 2019, and served a  
 8 supplemental response on December 19, 2019. (Doc. 341-1 at 4-5; Doc. 352-1 at 3.)  
 9 ADAB Mexico served its response to interrogatory number 6 on October 17, 2019. (Doc.  
 10 341-1 at 5.)<sup>6</sup>

11                   **1. Interrogatory Number 1**

12                   Interrogatory number 1 requested that ADAB Mexico provide "the bank name,  
 13 branch address, and account number for all bank accounts used by ADAB Mexico for the  
 14 period January 1, 2011, onwards." (Doc. 341-1 at 4.) ADAB Mexico timely objected  
 15 that the interrogatory was "overly broad" and sought "information that is not relevant and  
 16 not reasonably calculated to lead to the discovery of admissible evidence," but it provided  
 17 the name and address of one bank. (*Id.*) In an amended response served on December  
 18 19, 2019, ADAB Mexico reiterated its prior objection but provided bank account  
 19 numbers from two banks. (*Id.*; *see also* Doc. 366-1) OG argues that ADAB Mexico's  
 20 objections are waived because they are boilerplate, that ADAB Mexico's December 19,  
 21 2019 supplemental response was untimely and that it is deficient because it only  
 22 identifies bank accounts that ADAB Mexico currently uses and does not identify the bank  
 23 account number for the account identified in ADAB Mexico's initial response. (Doc.  
 24 341-1 at 5.) ADAB Mexico argues that it already provided OG with the information  
 25

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26 practical ability to obtain such documents. Furthermore, as OG notes, it stands to reason  
 27 that ADAB Mexico should have in its possession documentation concerning the ADAB  
 loan, because it is the borrower of that loan.

28 <sup>6</sup> OG does not contest the timeliness of the October 17, 2019 response. (*Id.*) Assuming  
 that interrogatory number 6 was served as part of OG's Second Set of Interrogatories to  
 ADAB Mexico, the October 17, 2019 response was timely.

1 OG's counsel requested during the parties' meet-and-confer, that OG has not contacted  
 2 ADAB Mexico to address the issues raised in the Motion to Compel, and that OG failed  
 3 to engage in the meet-and-confer process regarding the supplemental December 19, 2019  
 4 response. (Doc. 352 at 8-9, 13.)

5 For the reasons discussed above, the Court rejects OG's argument that OG waived  
 6 its objections to interrogatory number 1 because they are boilerplate. The Court also  
 7 rejects ADAB Mexico's argument concerning the parties' meet-and-confer efforts, and it  
 8 finds that ADAB Mexico's objection concerning information "not reasonably calculated  
 9 to lead to the discovery of admissible evidence" is based on an outdated version of Rule  
 10 26. The Court finds that interrogatory number 1 is relevant for the reasons discussed  
 11 above, and that it is proportional to the needs of the case. Accordingly, the Court will  
 12 order ADAB Mexico to substantively respond to interrogatory number 1. Although the  
 13 Court rejects OG's request to prophylactically preclude ADAB Mexico from invoking  
 14 Rule 33(d) or incorporating materials by reference in its response, the response should be  
 15 clear and understandable.

16 **2. Interrogatory Number 6**

17 Interrogatory number 6 requested "the name and address of ADAB Mexico's  
 18 customers." (Doc. 341-1 at 5.) ADAB Mexico objected that the interrogatory sought  
 19 "confidential and highly proprietary" "commercial business information" "that is not  
 20 relevant to any issue in the case" and "not proportionate to the legitimate needs of the  
 21 case." (*Id.*) OG argues that ADAB Mexico's objection is waived because it is  
 22 boilerplate, and that any confidentiality concerns are adequately addressed by the Court's  
 23 protective order. (*Id.*; *see also* Doc. 365 at 12.) In response to OG's Motion to Compel,  
 24 ADAB Mexico argues that interrogatory number 6 is irrelevant and disproportionate to  
 25 the legitimate needs of the case. (Doc. 352 at 15.)

26 The Court rejects OG's argument that ADAB Mexico's objection to interrogatory  
 27 number 6 is waived for being boilerplate, but it agrees with OG that interrogatory number  
 28 6 is relevant to the issue of whether intangible assets in the form of customer

1 relationships were fraudulently transferred. ADAB Mexico has not shown that disclosing  
 2 the names and addresses of its customers would be particularly difficult or burdensome,  
 3 and given the importance of the issue of whether intangible assets were fraudulently  
 4 transferred, the significant amount of money in controversy, and the parties' relevant  
 5 access to this information, the Court finds interrogatory number 6 to be proportional to  
 6 the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Although the Court recognizes that  
 7 the identity of ADAB Mexico's customers is proprietary information, it agrees with OG  
 8 that any confidentiality concerns are adequately addressed by the Court's protective  
 9 order. Accordingly, the Court will order ADAB Mexico to substantively respond to  
 10 interrogatory number 6. Although the Court rejects OG's request to prophylactically  
 11 preclude ADAB Mexico from invoking Rule 33(d) or incorporating materials by  
 12 reference in its response, the response should be clear and understandable.

13 **F. OG's Third Set of Interrogatories to ADAB Mexico**

14 OG served its Third Set of Interrogatories to ADAB Mexico on September 27,  
 15 2019, including interrogatory numbers 8-13. (Doc. 341-1 at 6-13; Doc. 352-1 at 3.)  
 16 Interrogatory number 8 requested "the section/paragraph number of all Maquiladora  
 17 agreement(s), contracts, addenda, minutes, and any other agreements between Blessings  
 18 and ADAB Mexico that authorized" payments listed in Defendants' Exhibit 109 from the  
 19 preliminary injunction hearing. (Doc. 341-1 at 6.) Interrogatory number 9 requested a  
 20 detailed explanation of what the entry for \$1,065,067 in Exhibit 109 is made up of. (*Id.*  
 21 at 8.) Interrogatory number 10 requested an explanation of the purpose of the entries for  
 22 "2015 Loan to ADAB" in Exhibit 109. (*Id.* at 9.) Interrogatory number 11 requested a  
 23 detailed explanation of what the entry for \$367,310.10" in Exhibit 109 is made up of.  
 24 (*Id.* at 10.) Interrogatory number 12 requested "the section/paragraph number of all  
 25 Maquiladora agreement(s), contracts, addenda, minutes, and any other agreements that  
 26 authorized Blessings' payment of processing fees to ADAB Mexico from January 1,  
 27 2013, onwards." (*Id.* at 11.) Interrogatory number 13 requested the bates numbers of all  
 28 documents responsive to OG's September 27, 2019 Second Consolidated Requests for

1 Production. (*Id.* at 12.)

2 ADAB Mexico served responses and objections to OG's Third Set of  
 3 Interrogatories on December 19, 2019. (Doc. 341-1 at 7-13; Doc. 352-1 at 3.) In its  
 4 December 19, 2019 objections, and in response to OG's Motion to Compel, ADAB  
 5 Mexico argues that OG's Third Set of Interrogatories seeks information outside of ADAB  
 6 Mexico's control. (Doc. 341-1 at 7-13; Doc. 352 at 10-11.) ADAB Mexico also argues in  
 7 response to OG's Motion to Compel that interrogatory numbers 8 and 12 require it to give a legal opinion, perform an extensive investigation, and conduct complex research;  
 8 ADAB Mexico did not make those arguments in its December 19, 2019 objections.  
 9 (Doc. 352 at 11-12; *see also* Doc. 341-1 at 7, 11.) OG argues that ADAB Mexico's  
 10 objections have been waived due to untimeliness. (Doc. 341 at 12-13; *see also* Doc. 365  
 11 at 3-4, 11-12.)

12 ADAB Mexico's response to OG's Third Set of Interrogatories was due on  
 13 October 27, 2019, but ADAB Mexico did not serve its objections until December 19,  
 14 2019. Furthermore, it raised its arguments concerning legal opinions and extensive  
 15 investigation and research for the first time in response to OG's Motion to Compel,  
 16 approximately five months after objections were due. ADAB Mexico has not shown  
 17 good cause to excuse its failure to timely object to OG's Third Set of Interrogatories. *See*  
 18 *Liguori*, 2012 WL 760747, at \*11-12. By failing to timely object, ADAB Mexico has  
 19 waived its objections. *See Richmark Corp.*, 959 F.2d at 1473. Accordingly, the Court  
 20 declines to consider ADAB Mexico's objections and will require ADAB Mexico to  
 21 substantively respond to the interrogatories contained in OG's Third Set of  
 22 Interrogatories. Although the Court rejects OG's request to prophylactically preclude  
 23 ADAB Mexico from invoking Rule 33(d) or incorporating materials by reference in its  
 24 responses, the responses should be clear and understandable.

25

26 **G. Fee-Shifting Sanctions**

27 OG requests fee-shifting sanctions and argues that, if nothing else, sanctions are  
 28 warranted for ADAB Mexico's unexplained refusal to serve timely objections to

1 interrogatory numbers 8-13, any objections to RFP numbers 29-30, any bank statements,  
 2 and a copy of its Pacific Ocean lease. (Doc. 365 at 4-6, 8-12 (citing Fed. R. Civ. P.  
 3 37(b)(2); Fed. R. Civ. P. 37(d)(1)(A)(ii)); *see also* Doc. 341 at 16-17.)

4 Under Federal Rule of Civil Procedure 37(d)(1)(A)(ii), a court may order  
 5 sanctions if “a party, after being properly served with interrogatories under Rule 33 or a  
 6 request for inspection under Rule 34, fails to serve its answers, objections, or written  
 7 response.” Such a failure “is not excused on the ground that the discovery sought was  
 8 objectionable, unless the party failing to act has a pending motion for a protective order  
 9 under Rule 26(c).” Fed. R. Civ. P. 37(d)(2). Sanctions may include any of the orders  
 10 listed in Rule 37(b)(2)(A)(i)-(vi) and/or an order requiring “the party failing to act, the  
 11 attorney advising that party, or both to pay the reasonable expenses, including attorney’s  
 12 fees, caused by the failure, unless the failure was substantially justified or other  
 13 circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3).

14 The record before the Court does not show that ADAB Mexico’s failure to serve  
 15 any objections to RFP numbers 29-30 was substantially justified. The record also does  
 16 not reveal substantial justification for ADAB Mexico’s failure to timely respond to  
 17 interrogatory numbers 8-13 or to provide the other substantive discovery responses  
 18 required by this Order. *See* Fed. R. Civ. P. 37(a)(5)(A)(ii). Under the circumstances  
 19 presented by the record before the Court, neither ADAB Mexico’s status as a foreign  
 20 litigant nor its allegations of abusive discovery practices are sufficient to justify its  
 21 recalcitrance in responding to OG’s discovery requests. A fee-shifting award would not  
 22 be unjust. *See* Fed. R. Civ. P. 37(a)(5)(A)(ii); Fed. R. Civ. P. 37(d)(3). The Court will  
 23 order ADAB Mexico to reimburse OG for the costs of litigating the Motion to Compel.

24 **IT IS ORDERED** that Plaintiff’s Motion to Compel and for Sanctions Against  
 25 Pacific Ocean Harvest, S. De R.L. De C.V. (Doc. 396) is **granted**, as follows:

26 • Within fourteen (14) days of the date this Order is issued, Pacific Ocean shall  
 27 substantively respond to Plaintiff’s RFP numbers 21, 22, 23, 26, and 27 and  
 28 interrogatory numbers 1-8;

- 1      • Within fourteen (14) days of the date this Order is issued, Pacific Ocean shall  
2      answer the UFTA SAC and serve its initial MIDP responses, in compliance with  
3      General Order 17-08 and the Federal Rule of Civil Procedure;
- 4      • Pacific Ocean shall reimburse Plaintiff for the reasonable expenses, including  
5      attorneys' fees, incurred in litigating the Motion to Compel (Doc. 396). The  
6      parties are directed to confer with one another to determine whether they can agree  
7      to a stipulation concerning the amount of those expenses. If the parties are unable  
8      to so stipulate, Plaintiff may file an appropriate motion.

9           **IT IS FURTHER ORDERED** that Plaintiff's Motion to Compel and for  
10      Sanctions Against ADAB Ocean Harvest, S. De R.L. De C.V. ("ADAB Mexico") (Doc.  
11      341) is **granted**, as follows:

- 12      • Within fourteen (14) days of the date this Order is issued, ADAB Mexico shall  
13      substantively respond to Plaintiff's RFP numbers 18, 26, 27, 29, and 30, and  
14      interrogatory numbers 1, 6, and 8-13.
- 15      • ADAB Mexico shall reimburse Plaintiff for the reasonable expenses, including  
16      attorneys' fees, incurred in litigating the Motion to Compel (Doc. 341). The  
17      parties are directed to confer with one another to determine whether they can agree  
18      to a stipulation concerning the amount of those expenses. If the parties are unable  
19      to so stipulate, Plaintiff may file an appropriate motion.

20           **Dated this 27th day of July, 2020.**

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Honorable Rosemary Márquez  
United States District Judge